



Tab 4

Approval of Higher Education Student Funding Act Rule Revision

Coordinating Board for Higher Education
September 15, 2021

BACKGROUND

During the 2021 session, the General Assembly passed and Governor Parson signed House Bill 297 making a variety of changes to legislation impacting higher education institutions. One change removed the statutory caps on tuition increase known as the Higher Education Student Funding Act (HESFA). The new legislation removes the tuition caps, leaving only the requirement that institutions notify DHEWD of their upcoming academic year tuition rate by July 1 of each year. The new legislation also added a provision allowing institutions to charge differential tuition.

DHEWD implements the previous version of HESFA through an administrative rule located at 6 CSR 10-14.010. Due to the changes to the legislation, DHEWD must revise the administrative rule.

CURRENT STATUS

The draft administrative rule is included as Attachment A. DHEWD staff drafted the administrative rule amendment with input from staff and institutions. Once it became clear that Governor Parson planned to sign HB 297, DHEWD staff began communicating with all institutions on how to define “differential tuition” as that term is new to the HESFA legislation.

DHEWD conducted its own research of how “differential tuition” is defined across the country and received feedback from a variety of institutions on how to define it. The majority of institutions did not care how DHEWD defined “differential tuition” so long as their current tuition structures were allowed to continue. The remainder of institutions supported defining “differential tuition” as tuition charged at a higher level for certain degree programs.

Based upon the feedback it received, DHEWD prepared a draft administrative rule revision and circulated it to the institutions for feedback. Three institutions responded. All three institutions asked DHEWD to clarify that the prohibition on course fees for courses in a “differential tuition” program only applies to courses required as part of the degree program and not electives. DHEWD found that request reasonable and incorporated it into the draft rule revision.

The attached draft proposed rule revision is the result of several months of collaboration between DHEWD staff and institutions of higher education.

NEXT STEPS

If approved, the department will begin the rule promulgation process by filing the proposed rule with the Secretary of State. The proposed rule will then be published in the Missouri Register and a 30 day public comment period will commence. Once the comment period has closed, the department will file an order of rulemaking, which will include information about comments received and any resulting revisions to the original proposed rule. The rule becomes effective 30 days after it is published in the Code of State Regulations.

RECOMMENDATION

Staff recommend that the Coordinating Board direct the Commissioner of Higher Education to take all actions necessary to ensure the attached proposed administrative rule becomes effective as soon as possible.

ATTACHMENT

- HESFA Proposed Administrative Rule Amendment

Tab 4 Attachment
Proposed HESFA Administrative Rule Amendment

**Title 6—DEPARTMENT OF
HIGHER EDUCATION
Division 10—Commissioner
of Higher Education
Chapter 14—*[Limit on]* Tuition Increases**

6 CSR 10-14.010 *[Limit on]* Tuition Increases. The *Department of Higher Education and Workforce Development* is amending all sections of the rule in the *Code of State Regulations*.

PURPOSE: This rule establishes the process by which public institutions of higher education in Missouri will demonstrate compliance with the Higher Education Student Funding Act, sections 173.1000-173.1003, RSMo.

(1) Definitions.

(A) Academic year means the fall and spring semesters between August 1 and July 31 of one (1) three hundred sixty-five- (365-) day period.

[(B) Average tuition means the sum of all included institutions' tuition for the current academic year divided by the number of included institutions. This figure will be determined by adding the tuition of each public four- (4-) year institution and State Technical College, then dividing by the number of included institutions. If any community college has tuition that is equal to or exceeds the aforementioned average tuition, the average tuition shall be recalculated to include that community college's tuition.]

(C) Booked tuition means the amount of tuition and required fees an institution records with Missouri Department of Higher Education (MDHE) as permitted under this rule, but not actually charged during an academic year. Booked tuition is included in an institution's allowable annual increase and the average tuition, but is waived for students in the year that it is initially booked. Booked tuition may be charged in future years without counting further towards an institution's allowable increase when charged.]

[(D)] (B) CBHE means the Coordinating Board for Higher Education.

[(E)] (C) Commissioner means the Commissioner of Higher Education.

(D) Course fees means those fees in addition to tuition charged to full-time undergraduate students for enrollment in specific courses, excluding student approved fees and required fees.

[(F) Consumer price index or CPI means the consumer price index for all urban consumers, 1982-1984=100, not seasonally adjusted, as defined and officially recorded by the United States Department of Labor or its successor agency, for December of the current year compared to December of the previous year.]

(E) Differential tuition or differentiated tuition means a system of charging tuition in which Missouri resident undergraduate students enrolled full-time in certain undergraduate degree programs designated by the institution are charged tuition at additional rates or amounts greater than what is charged to each Missouri resident undergraduate student for courses required for that degree program. The additional rates or amounts of tuition in a differentiated tuition system must be based on enrollment in the designated degree program and not based on enrollment in specific courses.

(F) Elective means a course or class taken by a student which does not satisfy any required component of a degree program, including required general education courses, for which an institution is charging differentiated tuition.

[(G)] (G) [Fee established by the student body of the institution or s] Student approved fee means any fee the amount of which has been approved by a majority of students who vote in a campus-wide election or by a majority of members of an officially recognized student government organization popularly elected by the students of an institution or a campus within a multi-campus system.

[(H)] FTE means full time equivalent.]

[(I)] (H) Included institution means all institutions that offer four- (4-) year degree programs, State Technical College, and any community college that charges out-of-district Missouri residents tuition that is equal to or exceeds the average tuition.

[(J)] (I) Institution means an approved public institution of higher education, as defined in section 173.1102, RSMo. An institution that is comprised of more than one (1) campus at which the same level of degree is offered shall constitute one (1) institution for purposes of this rule.

[(K)] Institutional aid means the aid awarded to the student by the student's institution of higher education only from such institution's funds. It does not include the following: Pell Grants; state awards such as the Missouri higher education academic scholarship program, the A+ schools program, and the access Missouri financial aid program; foundation scholarships; third-party scholarships; employee and dependent fee waivers; and student loans.]

[(L)] (J) MDHEWD means the Missouri Department of Higher Education and Workforce Development.

[(M)] Mid-year tuition increase means any ongoing increase in tuition that occurs after an institution has submitted its initial notice of tuition change to the MDHE, or any amended notices of tuition change related to the initial notice of tuition change, the duration of which extends beyond the end of the academic year in which it is initially imposed.]

[(N)] (K) Notice of tuition change means written documentation in a format prescribed by MDHEWD, the accuracy of which is attested by the institution's president or chancellor, indicating the tuition for the current academic year, the tuition for the upcoming academic year, and the percentage change between the two (2).

[(O)] Net tuition revenue means the net amount of tuition and required fees collected from resident degree-seeking undergraduates reduced by institutional aid only during the fiscal year in which the increase is charged.]

[(P)] (L) Required fees means those fees charged to all full-time undergraduate students and excludes course [- and program-specific] fees and any student approved fee established after August 27, 2007.

[(Q) State appropriations means the state operating appropriation for the prior year per FTE student for the prior year compared to the state operating appropriation for the current year per FTE student for the prior year.

(R) State operating appropriation means the total dollar amount appropriated by the Missouri Legislature for an institution's core operating appropriation for the fiscal year, exclusive of capital appropriations and any amount withheld by the governor or legislature.

(S) State operating support means the funding actually disbursed from state operating appropriations to approved public institutions and does not include appropriations or disbursement for special initiatives or specific program additions or expansions. To qualify as special initiatives or specific program additions or expansions, it must be separated out in its own line item. Performance funding will be considered as a part of an institution's state operating support regardless of if the legislature decides to appropriate it as a separate line item(s).

(T) Temporary tuition surcharge means any temporary increase in tuition that is assessed in addition to the amount indicated by an institution in its initial notice of tuition change, or in any amended notices of tuition change related to the initial notice of tuition change. The time period during which a temporary tuition surcharge is assessed shall not extend beyond the end of the academic year in which the surcharge is initially imposed.]

[(U)] (M) Tuition means the dollar amount an institution charges each Missouri resident undergraduate student enrolled in thirty (30) credit hours plus the required fees for the academic year. In the community college context, "tuition" means out-of-taxing-district Missouri resident tuition plus the required fees for the academic year.

(2) [Limits on] Notice of Tuition Increases.

(A) [Any institution with tuition that is greater than the average tuition shall not increase tuition for the next academic year at a percentage rate that exceeds the percentage increase in the CPI or zero, whichever is greater, plus a percentage of not more than five percent (5%) that would produce an increase in net tuition revenue no greater than the dollar amount by which the state operating support was reduced for the prior fiscal year, if applicable. Booked tuition will count toward an institution's allowable increase and the average tuition in the year it is initially booked.

(B) Any institution with tuition that is less than the average tuition shall not increase tuition for the next academic year in a dollar amount that exceeds the product of either zero or the percentage change in the CPI, whichever is greater, times the average tuition, plus a percentage of not more than five percent (5%) that would produce an increase in net tuition revenue no greater than the dollar amount by which the state operating support was reduced for the prior fiscal year, if applicable. Booked tuition will count toward an institution's allowable increase and the average tuition in the year it is initially booked.

(C) A community college shall be required to abide by the limitations and procedures set forth in this rule only if its tuition is greater than or equal to the average tuition.

(D) Any institution that exceeds the limits set forth in subsection (A) or (B) of this section shall remit five percent (5%) of its state operating appropriation during the fiscal year in which the tuition increase will take place to the state's general revenue fund or request a waiver of the five percent (5%) penalty pursuant to section (4) of this rule.

(3) Notification Procedure.

(A) By December 1 of each year, MDHE will notify all institutions of the average tuition. This notice will also indicate which institutions have higher than average tuition, which institutions have lower than average tuition, and which institutions will be exempt from the requirements of this rule for the upcoming academic year.

(B) By January 31st of each year, MDHE will notify all institutions of the prior year's CPI and their allowable increase.

*(C)] By July 1 of each year, each **included** institution must submit its notice of tuition change to the CBHE, via MDHEWD. If the notice of tuition change is discovered to be inaccurate or becomes inaccurate due to changes in underlying data or assumptions, the institution shall notify MDHEWD immediately and submit a corrected notice of tuition change as soon as practicable.*

*[(D)] (B) Any institution that imposes a mid-year tuition increase and/or [temporary tuition surcharge] **switches to differential tuition mid-year** must provide a notice of tuition change reflecting the increase as soon as it is practically possible to do so. [and will submit to the following:*

1. If the mid-year tuition increase and/or temporary tuition surcharge plus the tuition initially indicated in the institution's notice of tuition change exceed the increase permitted by this rule, the institution must abide by the terms of this rule.

2. Because any mid-year tuition increase and/or temporary tuition surcharge will likely be associated with exigent circumstances, the Commissioner and the CBHE recognize that the timeline this rule sets forth for the normal appeals process may be too lengthy for mid-year appeals. The Commissioner and the CBHE will address mid-year appeals in as expeditious a manner as possible, and any institution seeking a waiver under this rule is expected to provide all required information in a like manner. All parties will honor the intent of the timeline this rule sets forth for the normal appeals process, and adequate time for public comment, preparation of responses, consideration of arguments, and deliberation will be afforded.

3. If an institution imposes a mid-year tuition increase, the figure used to calculate the amount the institution may increase tuition the following year will be the amount indicated in the institution's initial notice of tuition change, or in any amended notices of tuition change related to the initial notice of tuition change, plus any mid-year tuition increase.

4. If an institution imposes a temporary tuition surcharge, the figure used to calculate the amount the institution may increase tuition the following year will be the amount indicated in the institution's initial notice of tuition change, or in any amended notices of tuition change related to the initial notice of tuition change, plus any mid-year tuition increase, but shall not include any amount attributable to a temporary tuition surcharge.

(E) Within 15 calendar days of receiving the institution's notice of tuition change, MDHE will notify the institution that its notice of tuition change has been received and

whether its tuition increase triggers the penalty described in subsection (2)(D) of this rule.]

[(4) Penalty Waiver Process.

(A) No later than thirty (30) calendar days after receiving MDHE's notification that the tuition increase triggers the penalty, an institution may submit a request for a waiver of the penalty. The waiver request must set forth each factor the institution contends supports its decision to increase tuition in excess of the limits set forth in this rule.

(B) No later than forty-five (45) calendar days after the institution submits its waiver request, the commissioner will meet with the institution at a time and place agreeable to all parties.

(C) The commissioner may ask an institution to submit additional or clarifying written material to supplement the institution's waiver request before or after the meeting. Such requests from the commissioner may include, among others, information regarding the areas of inquiry listed in section (5) of this rule.

(D) An institution requesting a waiver must provide all information requested by the commissioner in a timely manner.

(E) All written materials, including, but not limited to, notices of tuition change and waiver requests, submitted to the commissioner in connection with this rule will be considered public information and will be posted on MDHE's website. The MDHE website will specifically advise members of the public that they may submit written comments about any of the posted material to the commissioner at any time before the meeting of the commissioner and the institution requesting a waiver takes place. The commissioner may determine the weight each comment should be afforded and may consider the comments in determining whether to grant a waiver. Copies of all comments must be provided to the institution requesting a waiver within three (3) calendar days of the date the comment is received.

(F) Unless otherwise agreed, the meeting of the commissioner and the institution requesting a waiver will be led by the commissioner and may include other individuals as requested by the commissioner. The institution will have an opportunity to present its rationale for seeking a waiver and to address any comments received from the public. The commissioner and/or his/her staff will have an opportunity to ask questions of the institution.

(G) The commissioner will notify the institution whether he/she has determined that its tuition increase is sufficiently warranted within twenty (20) calendar days of the meeting or within twenty (20) calendar days after the institution has provided all information requested by the commissioner, whichever is later. If the commissioner finds that the tuition increase is not sufficiently warranted, such notice shall be in writing and shall state the reasons that such increase was deemed not sufficiently warranted. The notice will also inform the institution what percentage, if any, of its state operating appropriation the commissioner recommends the institution be required to remit to the state's general revenue fund.

(H) If the commissioner determines that the tuition increase is not sufficiently warranted, the institution shall have ten (10) calendar days to submit an amended notice of tuition change and the rationale for the tuition rate set forth in the amended notice of tuition change, to agree to increase tuition only at the level permitted by section (2) of

this rule, or to maintain its original position. In any case, the institution shall notify the commissioner of its decision in writing within ten (10) calendar days after the commissioner notifies the institution that the initial tuition increase is not sufficiently warranted.

(I) If the institution submits an amended notice of tuition change—

1. The commissioner shall consider the amended notice of tuition change and the rationale for the tuition rate set forth in the amended notice of tuition change and shall meet with the institution if deemed necessary by the commissioner;

2. The commissioner will notify the institution whether he/she has determined that the tuition increase set forth in the amended notice of tuition change is sufficiently warranted within twenty (20) calendar days of the meeting or within twenty (20) calendar days after the institution has provided all information requested by the commissioner, whichever is later;

3. If the commissioner finds that the tuition increase is not sufficiently warranted, such notice shall be in writing and shall state the reasons that such increase was deemed not sufficiently warranted. The notice will also inform the institution what percentage, if any, of its state operating appropriation the commissioner recommends the institution be required to remit to the state's general revenue fund;

4. If the commissioner determines that the tuition increase set forth in the institution's amended notice of tuition change is not sufficiently warranted, the institution shall have ten (10) calendar days within which to either agree to increase tuition only at the level permitted by section (2) of this rule or to maintain the position indicated in its amended notice of tuition change. In either case, the institution shall notify the commissioner of its decision in writing within ten (10) calendar days after the commissioner notifies the institution that the amended tuition increase is not sufficiently warranted; and

5. An institution may not submit more than one (1) amended notice of tuition change per academic year unless requested by the commissioner.

(J) If the commissioner determines that the tuition increase is not sufficiently warranted and the institution decides to maintain its original and/or amended position rather than to increase tuition only at the level permitted by section (2) of this rule, the commissioner must notify the CBHE of his/her determination and recommendation as to what percentage of the institution's state operating appropriation the commissioner recommends the institution be required to remit to the state's general revenue fund.

(K) If the commissioner determines that the tuition increase is not sufficiently warranted, the CBHE will determine what, if any, percentage of the institution's state operating appropriation must be remitted to the state's general revenue fund at its next regularly scheduled meeting or at a specially called meeting, by means of a majority vote of all CBHE members present at the meeting, whether present in person or by electronic means; provided, however, that no vote will be made on the matter unless a quorum is established. The institution will have an opportunity to present each factor it believes supports its decision to increase tuition to the CBHE. The CBHE's decision will be binding and final.

(L) If the CBHE votes to impose a penalty, the penalty shall be up to five percent (5%) of the institution's state operating appropriation during the fiscal year in which the tuition increase will take place. The penalty shall be a one- (1-) time penalty only. The

institution shall remit the penalty to the state's general revenue fund no more than thirty (30) calendar days after the date the CBHE votes to impose the penalty.

(M) All written material submitted by an institution in connection with this rule shall be submitted in electronic form.

(N) The commissioner, at his/her discretion, may agree to extend any deadline described in this rule.

(O) Throughout his/her tenure, the commissioner will be committed to addressing waiver requests in a timely manner. Failure by the commissioner to meet any deadline described in this rule shall not, however, invalidate the process.

(P) This rule is not intended to inhibit institutions' ability to engage in conversations with the commissioner, MDHE staff, or the CBHE about issues of interest to members of the higher education community, including tuition.

(5) Penalty Waiver Decision Criteria.

(A) The commissioner shall consider all written and verbal information provided by an institution and through public comments in the waiver request process when determining whether the tuition increase is sufficiently warranted. The commissioner may request the institutions to provide information about the number of students enrolled at satellite or branch campuses, in online classes, or in distance education programs at each institution, and the tuition charged for each such type of education. The commissioner may evaluate information outside the institution-provided material to the extent necessary to ensure a fair and complete decision, though any attempt to do so will not relieve the institution of its burden to produce a complete and accurate decision-making record.

(B) The determination of whether an institution's tuition increase is sufficiently warranted will be based on the relationship between state appropriations and the consumer price index. The commissioner may also consider extraordinary circumstances, including, but not limited to:

1. Mandatory costs that have increased at a rate that exceeds the CPI, including but not limited to increased costs incurred in connection with the implementation of state or federal mandates or legal requirements;

2. Historical trends in state operating appropriations, tuition policy, and other financial issues and relationships;

3. Costs related to the institution's mission that justify growth in revenues in excess of the CPI;

4. Costs related to initiatives designed to meet specific needs or strategic goals of the state of Missouri that justify growth in revenues in excess of the CPI;

5. The current and/or historical structure of the institution's total budget, including the institution's allocations for faculty and non-faculty salaries, institutional financial aid, student support, research, physical plant maintenance, and other operational activities;

6. Damage, destruction, or deterioration of facilities, infrastructure, property, or other physical assets of an institution for which there are insufficient funds from state appropriations or insurance proceeds to repair or replace;

7. Public comments about the material posted on MDHE's website pertaining to the institution's waiver request; and

8. *Magnitude of tuition increase and the likely impact on the students the institution serves.]*

(3) Differentiated Tuition

(A) An institution may utilize differentiated tuition. An institution that is comprised of more than one (1) campus at which the same level of degree is offered may decide to use differentiated tuition at all of its campuses or only at designated campuses.

(B) If an institution decides to utilize differentiated tuition, it must notify MDHEWD of that decision no later than 30 days before the differentiated tuition is implemented. An institution that is comprised of more than one (1) campus at which the same level of degree is offered must provide such notification to MDHEWD for each campus at which differentiated is to be implemented.

(C) When charging differentiated tuition, an institution must discontinue charging course fees for courses taken towards the degree program for which the institution is charging differentiated tuition. Institutions may continue charging course fees for electives. Course fees can be charged until differentiated tuition is implemented and an institution may collect any course fees that were charged prior to implementation of differentiated tuition.

AUTHORITY: section 173.1000, RSMo 2016, and section 173.1003, RSMo Supp. 2018.
Original rule filed April 30, 2019, effective Oct. 30, 2019.*

**Original authority: 173.1000, RSMo 2007 and 173.1003, RSMo 2007, amended 2018.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support or in opposition to this proposed rule with the Department of Higher Education and Workforce Development, General Counsel, PO Box 1469, Jefferson City, MO 65102-1469. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*